

These several kinds of property or rights may therefore be regarded as other instances, in which the liability of beneficial interests in land to be taken in execution, falls short of the power of alienation; for these, and indeed almost every species of contingences may, in equity, be bound by contract for valuable consideration. (o)

It was a general rule, that the legal estate only could be held liable; and therefore, at common, no use or trust in land could be taken in execution on a judgment against the *cestui que use*; nor could any such interest be extended under an *elegit*; because the statute only referred to lands according to the common law. A statute passed in the year 1483, was the first which subjected uses to an execution upon a judgment; (p) which became obsolete after the statute of 1535, for transferring uses into possession. (q) An act passed in the year 1503, was, however, the first which made uses liable to be taken in execution in express terms. (r) But the subsequent revival of uses, under the name of trusts, called for a further interposition of the Legislature; and accordingly by the statute of frauds of 1676, pursuing the language of the statute of 1483, as to uses in respect of trusts, it is declared, that it shall be lawful for the officer to whom any writ shall be directed at the suit of any person upon any judgment, to do, make, and deliver execution unto the parties in that behalf suing of all such lands as any other person shall be seised or possessed in trust for him against whom execution is sued. (s) This provision of the statute of frauds is, however, confined to estates of freehold or lands and tenements, and says nothing as to trusts of chattel interests; consequently, an equitable interest in a term for years could not be taken in execution and sold by a *fiери facias*. It has also been expressly decided in England, that an equity of redemption of a term for years could not be taken in execution by a *fiери facias*. And upon the same principles it would seem necessarily to follow, that an equity of redemption of the freehold could not be extended under an *elegit*. But, as the judgment created a lien upon the equity of redemption of the freehold, the creditor might obtain the benefit of his judgment by going into a court of equity and redeeming any prior incumbrance. (t)

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(o) *Conrad v. The Atlantic Insurance Company*, 1 Peter. 443; *Wright v. Wright*, 1 Ves. 409; *Carleton v. Leighton*, 3 Meriv. 667.—(p) 1 Rich. 3, c. 1.—(q) 27 Hen. 8, c. 10.—(r) 19 Hen. 7, c. 15.—(s) 29 Car. 2, c. 3, s. 10.—(t) *Powel Mortg.* 255, 309, 601; *Scott v. Scholey*, 8 East. 467; *Metcalf v. Scholey*, 5 Bos. & Pull. 461.